

JAN 31 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISIONJAMES W. DUNN CLERK
By: *[Signature]* Deputy Clerk

UNITED STATES OF AMERICA :
: CRIMINAL ACTION NO.
v. :
: 1:12-CR-323-WSD-ECS
EDWARD K. KIM :
:

THIRD-PARTY CLAIM TO FORFEITED PROPERTY & MOTION TO AMEND
FORFEITURE ORDER

COMES NOW Samuel Markham Conder, Petitioner, and asks this Court to amend the forfeiture order and require the government to promptly return the property forfeited in the instant case — including a firearm and ammunition — to Petitioner, its rightful owner. *See* 18 U.S.C. § 983(d); 21 U.S.C. § 853(n). In support of this third-party claim, Petitioner offers the following:

1. My contact information is Samuel Conder, 1615 Victoria Chase, Cumming, GA, 30041, (404) 713-1593, samuelconder@yahoo.com.
2. I am the owner of the firearm and ammunition described in the Court's order of forfeiture in the instant case: (a) one .38 caliber Smith & Wesson resolver (Serial No. D328969) and (b) assorted ammunition. (Doc. 18).
3. I acquired the firearm in approximately April 2012, in Cumming, Georgia, when my step-father Edwin Kotlarz gave it to me as a gift.
4. I acquired the ammunition in approximately April 2012, in Cumming,

Georgia, when my step-father Edwin Kotlarz gave it to me as a gift.

5. The firearm and ammunition were stolen from me on August 17, 2012, by Edward Kim, the defendant in this case. Mr. Kim is the brother of my wife, Jenny Conder. Mr. Kim was visiting our home at 1615 Victoria Chase at the time he stole the firearm and ammunition. My wife and I reported the theft to the Forsyth County (Ga.) Police Department the same day. (I have attached a copy of the police report with this petition and marked it as Exhibit A.) Mr. Kim's theft charges are currently pending in the Forsyth County Superior Court.
6. Meanwhile, Mr. Kim committed several robberies in the days following the theft of my firearm and ammunition. He pled guilty on December 11, 2012, to these robberies in this federal indictment. He used my firearm during these crimes, but he did so without my knowledge and without my permission. I was not involved in the criminal conduct in any way. I only found out about these robberies after the fact.
7. My firearm and ammunition are named and described in the forfeiture provision in the indictment. (Doc. 1). Following a motion by the government, the district court issued an order of forfeiture against the firearm and ammunition. (Doc. 18).

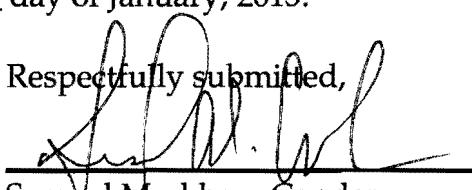
8. I have received notice of the forfeiture of the firearm and ammunition. These items lawfully belong to me, rather than to the government, and as a proper third-party claimant, I ask for their prompt return.
9. Through this motion, I have attempted to meet all the requirements of innocent-owner claimants under 18 U.S.C. § 983(d) and 21 U.S.C. § 853(n)(2). For this reason, the firearm and ammunition ought to be returned to me. First, I am an innocent owner. *See generally United States v. 5000 Palmetto Drive*, 928 F.3d 373 (11th Cir. 1991) (court found in favor of owner who allowed son to live at her home, where son committed crimes without her knowledge). Second, I did not know of Mr. Kim's criminal conduct nor of his use of my property during those crimes until after the fact. *See generally United States v. Carrell*, 252 F.3d 1193, 1203 (11th Cir. 2001) (measuring former forfeiture statute governing innocent-owner defense).
10. I expect that the government will not object to this motion. However, in the event that it objects, I hereby request a hearing before the Court on this matter. *See* 18 U.S.C. § 983(d); 21 U.S.C. § 853(n)(2) (cited by Court in its order).
11. I am not an attorney and I ask this Court interpret this motion and my

declaration liberally.

12. I make these statements above and sign my name below under penalty of perjury. I swear or affirm that I have provided this Court with truthful and complete information, to the best of my ability.

Dated: This the 23rd day of January, 2013.

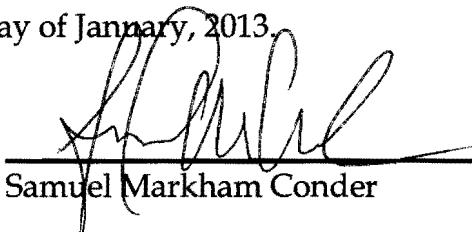
Respectfully submitted,


Samuel Markham Conder
1615 Victoria Chase
Cumming, GA, 30041
(404) 713-1593
samuelconder@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was formatted in Book Antiqua 13 pt., in accordance with Local Rule 5.1C, and was electronically filed this day with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to Dahil D. Goss, United States Attorney, 600 Richard B. Russell Building, 75 Spring Street, S.W., Atlanta, Georgia, 30303.

Dated: This the 23d day of January, 2013.


Samuel Markham Conder